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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIAH LOPEZ,

Plaintiff,

v.

17 Civ. 3014 (VEC) (OTW)

PROJECT RENEWAL, *et al.*,

Defendants.

Conference

New York, N.Y.
October 18, 2019
11:30 a.m.

Before:

HON. ONA T. WANG,

U.S. Magistrate Judge

APPEARANCES

ANDREA CHINYERE EZIE
Attorney for Plaintiff

GEORGIA M. PESTANA
Acting Corporation Counsel of the City of New York
New York City Law Department
Attorney for Defendant City of New York

BY: THOMAS B. ROBERTS
Assistant Corporation Counsel

Also Present: Brittany Francois, Esq.

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(Case called)

MS. EZIE: Hello. Chinyere Ezie, constitutional rights counsel for plaintiff Mariah Lopez, assisted by Ms. Durante.

THE COURT: Good morning.

Good morning, Ms. Durante.

MR. ROBERTS: Thomas Roberts, assistant Corporation Counsel, for the city, and I'm here today with Brittany Francois who is counsel at DHS.

I just wanted to thank your Honor for accommodating my schedule this morning.

THE COURT: Oh, no. In this case, it's all about accommodating the litigants' schedules and needs.

I wanted to raise an issue that came up this morning in case defendants weren't aware of it. We had planned on going forward with scheduling conferences on Mondays and Fridays to accommodate Ms. Lopez, who is more able to be in the city and be able to attend. But unfortunately, I guess I'm aware that Ms. Ezie called chambers this morning asking if there was any way that Ms. Lopez could either participate or attend by phone because she couldn't make it here today.

I think ultimately that was resolved, right, Ms. Ezie?

MS. EZIE: It was, and I would appreciate if there's a clarification on the procedure to follow in the future. I understood that telephonic appearance could be arranged just by

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1 telephone call to chambers, but I did ultimately reach out to
2 Mr. Roberts. I think we just both were beginning our commutes
3 by then.

4 THE COURT: OK. Here's the thing. Telephonic
5 appearances are possible, but that's if Ms. Lopez is actually
6 representing herself and can't make it. We have done that at
7 the last minute. Or now, since you're attorney of record,
8 Ms. Ezie, if you couldn't make it, if somebody can't make it,
9 you can apply. It's best to be done in advance with the other
10 side's consent.

11 And this goes for you, Mr. Roberts as well, with the
12 other side's consent. That said, this is not the type of case
13 that I think lends itself to telephonic conferences. I think
14 it's helpful for counsel to be here. If Ms. Lopez wants to be
15 here, she, of course, is invited and free to attend. But at
16 the same time, as long as she's represented, there will be a
17 transcript made of the conference and the transcript will be
18 made available. I think it can sometimes make the proceedings
19 difficult when one or more parties appear by phone, even if
20 it's just a partial appearance. And especially since we'll
21 have a transcript prepared shortly thereafter, there shouldn't
22 be any issues that then arise that could not be addressed later
23 with the benefit of a transcript anyway.

24 That's going forward. In the event that something
25 comes up and somebody can't attend, this is how you make your

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1 application. That said, in this case, I prefer to see you all
2 in person because I think it's most helpful. And of course,
3 now that Ms. Lopez has counsel, she can opt to appear in person
4 or not appear in person, but I also don't think that listening
5 in by phone is productive in any way at this point. OK? But
6 that said, we'll try to keep future conferences on Mondays or
7 Fridays so that Ms. Lopez may attend if she chooses.

8 I have a couple of things. I just wanted to go
9 through the joint agenda, I guess. Should we look to schedule
10 a settlement conference, and if so, how much time, Ms. Ezie,
11 would you need to be getting up to speed conferring with Ms.
12 Lopez so that you could be prepared for a settlement
13 conference?

14 MS. EZIE: Thank you, your Honor.

15 I think one question, obviously, is both the Court's
16 and the parties' availability for such a conference, but I was
17 hoping I could also get a little bit of insight about your
18 preferred practices for settlement conferences. I think that
19 might assist me answering this question.

20 THE COURT: Those are in my individual practices on
21 the website.

22 MS. EZIE: OK.

23 THE COURT: It's pretty clearly spelled out and, at a
24 minimum, in this case it will certainly be *ex parte* submissions
25 one week in advance. But I think because Ms. Lopez has been

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1 litigating this case on her own for quite some time, I want the
2 parties, when you come in for a settlement conference, to
3 roughly be on the same page, at least the parties and their
4 counsel, to understand what the scope of the discussions are,
5 what relief ultimately you might be willing to accept, how that
6 might play out in the negotiations.

7 Sometimes it might also fall to me, to counsel parties
8 and their lawyers on what might be realistic or doable from the
9 other side's perspective. But those are all conversations that
10 I expect the attorneys and the decision-makers and their
11 clients will be having all along as they're working on writing
12 their settlement submissions, because I'll take those
13 settlement submissions and go from there in terms of OK, what
14 are we going to talk about here, where do I think that the
15 parties may have some flexibility or some overlap?

16 The reason why these submissions in particular are *ex*
17 *parte* -- I don't require that in all my cases, but in this one
18 I think it's very helpful for it to be *ex parte* because then
19 there won't be any need to feel like you need to send any sort
20 of a message or take a particular position because you know the
21 other side won't be seeing it, and I think that works for both
22 sides in this case. I'd like everybody to look at a potential
23 settlement in terms of from a problem-solving perspective.
24 Right? We have an issue, we have a problem, what are ways to
25 get over that problem? And understanding also that defendants,

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1 because the defendants are who they are, have limited
2 flexibility, not just in terms of, say, a monetary settlement
3 but in terms of other avenues that Ms. Lopez might want, that
4 there are potentially different ways to look at it, but
5 ultimately there might be problems with flexibility, and
6 that'll be up to me to assess also. OK?

7 MS. EZIE: Thank you.

8 THE COURT: But definitely take a look at my
9 individual practices. They're available on the website. They
10 should set everything out. And then we can look at dates, but
11 as long as I understand that both parties are still interested
12 and willing to come in for a settlement conference, I think we
13 can get you in.

14 THE COURT: Yes, Mr. Roberts.

15 MR. ROBERTS: Your Honor, I agree with everything you
16 just said, but I'd sort of suggest before we schedule a date
17 for settlement conference, I think Ms. Ezie and my clients need
18 to talk. And I don't think I say anything inappropriate, or
19 stop me, but I talked to her and she is interested in some sort
20 of systemic relief, and I sent her this sort of relatively
21 significant package of our training on these issues, our
22 policies on these issues, and then also a settlement that we,
23 DHS, entered into with city's commission on human rights
24 concerning treatment of transsexual clients.

25 THE COURT: Transgender clients, right?

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1 MR. ROBERTS: I'm sorry.

2 And I have this feeling that before scheduling a date,
3 there should be a bunch of work the lawyers do to see what the
4 systemic relief they're requesting is, what can be done and
5 that we probably send you, have a date and then possibly send
6 you a status letter.

7 THE COURT: OK.

8 MR. ROBERTS: But I have this feeling, you were
9 looking at the calendar, that if you calendar or schedule the
10 settlement conference, like, a month or something from now, I
11 have this feeling that's going to be entirely premature, that
12 it wouldn't be productive for us, and that there's a fair
13 amount of work that needs to be done by the lawyers.

14 THE COURT: By the lawyers.

15 Ms. Ezie, is that right?

16 MS. EZIE: That's Mr. Roberts's position. He did
17 communicate that to me this morning, and I think we're open to
18 having preliminary discussions with counsel.

19 THE COURT: OK, but Mr. Roberts just held up a packet.

20 Mr. Roberts, was that provided to Ms. Lopez or to
21 Ms. Ezie?

22 MR. ROBERTS: Ms. Ezie.

23 THE COURT: OK. All right.

24 Yes. I expect the parties to have done some work.
25 And Ms. Ezie, I recognize that you're coming in here about two

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1 years after, while this case has been proceeding for two years.
2 I think maybe what I can do is set a status-letter date now and
3 in that you can discuss or propose maybe particular days that
4 you think might work for you all for a settlement conference.
5 I may or may not have time by then, but at least I'll get a
6 sense of how far out we need to have that be scheduled.

7 For the status letter I don't expect you to have
8 resolved anything. I think I'd want you to have a
9 conversation. Maybe in the next week have a conversation about
10 how much prework you both should be doing before an actual
11 settlement conference and how much of that prework you need to
12 do in order to prepare a fairly fulsome presettlement
13 conference submission, because you will have written product
14 you'll need to produce. Right?

15 Why don't you take the next week and submit a joint
16 status letter on October 25 to just let me know that you've had
17 these discussions about what types of prework you might need to
18 do and how long you might need to do that, and then at that
19 point maybe propose either some dates or some weeks where you
20 think you might be ready for a settlement conference,
21 recognizing that you'll need to make your submissions one week
22 in advance. OK?

23 MS. EZIE: Your Honor, just looking at my calendar, I
24 know that next week I'll be out of the office for quite a bit,
25 and I understood from Mr. Robert's proposal, we were hoping

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1 that we would have some more detailed discussions about the
2 actual, the settlement postures of the parties. So just to
3 facilitate time for those conversations, might we have a date
4 that's perhaps two to three weeks from now?

5 THE COURT: OK. November 1 instead. OK?

6 And remember, I'm not saying that you have to have
7 made progress on those discussions. I think I'd like you to
8 just talk about what you think you would each need to do in
9 terms of prework to prepare. OK? Because I would like you to
10 have at least some preliminary discussions about what types, if
11 systemic relief is being sought, what types of systemic relief
12 are being sought that are not already being addressed or aren't
13 being addressed quickly enough, in Ms. Lopez's view, and what
14 that might mean. OK?

15 This actually bleeds into or segues into plaintiff's
16 motion for class certification, which was going to be denied
17 when Ms. Lopez was *pro se*.

18 I was wondering, Ms. Ezie, if you might be intending
19 to file a renewed motion for class cert.

20 MS. EZIE: So, your Honor, with respect to that
21 motion, what I was going to respectfully request is that it be
22 either withdrawn or denied without prejudice to refile. It is
23 my hope that settlement discussions between myself and
24 defendants would be productive in the next few weeks and
25 months, but in the event that we're not able to reach a meeting

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1 of the minds, at that point in time I would be seeking to have
2 a scheduling order entered and some provision found for
3 plaintiff to file a renewed class motion.

4 THE COURT: OK. And then the other thing that
5 Ms. Lopez had been trying to do and had been running into
6 trouble with was getting her sealed family court records.

7 Does either side have an update on that?

8 MS. EZIE: Mr. Roberts and I spoke briefly about that
9 matter over email last week, and I think that we had placed it
10 within the bucket of fact discovery matters that do need to be
11 attended to if we're unable to reach settlement. But it was my
12 suggestion, particularly just in the spirit of conserving
13 resources, to really focusing on settlement issues.

14 THE COURT: All right.

15 Was there anything else? I think that takes care of
16 the issues on the joint agenda. Is there anything else that
17 anybody wanted to raise today?

18 MS. EZIE: Nothing here, your Honor.

19 MR. ROBERTS: No, your Honor.

20 THE COURT: OK. Again, the city is directed to order
21 a copy of the transcript. Provide a copy to Ms. Ezie so that
22 she can provide it to Ms. Lopez.

23 I'm not going to set a follow-up date for you all
24 because I will wait to see the status report on November 1, and
25 then hopefully we'll be able to set up a settlement conference

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1 date. OK?

2 All right. Anything else?

3 MS. EZIE: Not here. Thank you, your Honor.

4 THE COURT: Thank you very much.

5 We are adjourned.

6 (Adjourned)